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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/054,825 | 01/23/2002 | Kazuaki Onishi | SHC0167 | 7787 |

7590

12/13/2004

Michael S Gzybowski
Butzel Long
350 South Main Street
Suite 300
Ann Arbor, MI 48104

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| EXAMINER |
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ANDERSON, CATHARINE L

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| ART UNIT | PAPER NUMBER |
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3761

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/054,825

Applicant(s)

ONISHI ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/18/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chmielewski et al. (6,699,228).

Chmielewski discloses all aspects of the claimed invention with the exception of the opposite side edges of the supplementary absorbent batt assembly being space apart upwardly from the body facing surface of the primary absorbent batt assembly.

Chmielewski discloses a diaper, as shown in figure 1, comprising a primary absorbent batt assembly 34, a pair of barrier cuffs 501, and a supplementary absorbent batt assembly 70. The primary absorbent batt assembly 34 has a body facing surface sheet 30, a garment facing surface sheet 32, a front waist region 22, a rear waist region 24, and a crotch region 26. The barrier cuffs 501 have a proximal edge portion 304 and a distal edge portion 503, and extend along transversely opposite sides of the primary absorbent batt assembly 34 so as to rise up from the body facing surface, as shown in figure 2. The supplementary absorbent batt assembly 70 has a body facing surface 704 and an opposite surface 706, as shown in figure 2. The supplementary absorbent batt assembly 70 also has a proximal end portion 724 and distal end portion 728, as shown

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in figure 1, the proximal end portion 724 lying the front waist region 22. The distal end portion 728 is spaced apart upwardly from the primary absorbent batt assembly 34 to define a pocket opening 80 when under tension from, and therefore supported by, the barrier cuffs 501, as shown in figure 3.

It would have been obvious to one of ordinary skill in the art at the time of invention to space the opposite side edges of the supplementary absorbent batt assembly being space apart upwardly from the body facing surface of the primary absorbent batt assembly, since the applicant has not shown that this configuration serves any stated purpose or solves any stated problem. It appears the invention would perform equally well with the opposite side edges of the supplementary absorbent batt assembly being spaced slightly apart from or attached to the body facing surface of the primary absorbent batt assembly, since either configuration allows for the formation of a pocket opening between the supplementary and primary absorbent batt assemblies, thus allowing the invention to perform equally well either way.

With respect to claim 2, the primary absorbent batt assembly comprises a liquid pervious topsheet 30, a liquid impervious backsheet 32, and a liquid absorbent first core 34, as shown in figure 2.

With respect to claim 3, the supplementary absorbent batt assembly 70 comprises a liquid absorbent second core 702 and a liquid pervious sheet 704, as shown in figure 2.

With respect to claim 4, the barrier cuffs 501 include elastic members 504, as shown in figure 2.

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With respect to claim 5, the distal end portions 503 of the barrier cuffs 501 are positioned inwardly of the proximal end portions 304, as shown in figure 2.

With respect to claim 6, a pair of gasket cuffs 302 extend outwardly from the transverse opposite side edges of the liquid absorbent first core 34, as shown in figure 2.

With respect to claim 7, the gasket cuffs include elastic members 36, as shown in figure 2.

With respect to claim 8, the proximal ends 304 of the barrier cuffs 501 are attached to the gasket cuffs 302.

With respect to claim 11, the supplementary absorbent batt assembly 70 comprises a higher percentage of superabsorbent material than the primary absorbent batt assembly 34, as disclosed in column 9, lines 22-23, and column 10, lines 54-59, and therefore has a higher absorbing capacity.

Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chmielewski et al. (6,699,228) as applied to claim 1 above, and further in view of Onishi (JP1996-196565A).

Chmielewski discloses all aspects of the claimed invention with the exception of a second supplementary absorbent batt assembly. Onishi discloses a diaper having a supplementary absorbent batt assembly located in the front waist region, as shown in figure 1. Onishi further discloses a second supplementary absorbent batt assembly located in the rear waist region and smaller than the supplementary absorbent batt

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assembly, the second supplementary absorbent batt assembly forming a pocket between the crotch region and the rear waist region, as shown in figure 2. The second supplementary absorbent batt assembly provides a way to trap waste and minimize contact of the waste with the wearer of the diaper, as described in paragraph 16. It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the diaper of Chmielewski with a second supplementary absorbent batt assembly, as taught by Onishi, to trap waste and minimize contact of the waste with the wearer of the diaper.

Response to Arguments

Applicant's arguments filed 19 August 2004 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the supplementary absorbent batt assembly being attached to the barrier cuffs) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The applicant's arguments are drawn to the differences between the invention of Chmielewski, as shown in figure 3, and the instant invention, as shown in figure 2. However, the instant claims disclose the supplementary absorbent batt assembly being merely supported by, rather than attached to, the barrier cuffs. Chmielewski fulfills this limitation.

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Chmielewski discloses all aspects of the claimed invention. Chmielewski discloses a supplementary absorbent batt assembly 70 having a distal end portion 728 is spaced apart upwardly from the primary absorbent batt assembly 34 to define a pocket opening 80 when under tension from the barrier cuffs 501, as shown in figures 3 and 4. Since it is the tension from the barrier cuffs 501 that lifts the supplementary absorbent batt assembly 70 away from the primary absorbent batt assembly 34, the supplementary absorbent batt assembly 70 is therefore supported in this position by the barrier cuffs 501.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

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the statutory period for reply expire later than SIX MONTHS from the date of this final action.

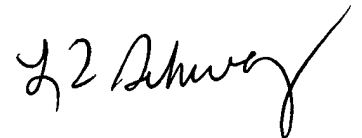
Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 571-272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WA
cla

November 23, 2004



Larry I. Schwartz
Supervisory Patent Examiner
Group 3700